IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 904 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAMIR AKHTAR IDRISHBHAI KURESHI

Versus

DY POLICE COMMISSIONER

Appearance:

MR ALKESH R BHATT for Petitioner

MR ST MEHTA, Learned APP for Respondents

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 07/12/2000

ORAL JUDGEMENT

Heard Mr. Falgun Bhrambhat learned advocate for the petitioner and Mr. S.T.Mehta, learned APP for respondents.

1. The petitioner has challenged the externment order passed by the respondent no.1 - Deputy Police Commissioner, Ahmedabad City, Zone -3 dated 16.6.2000 in exercise of power conferred under Section 56(b) of the Bombay Police Act, 1951 (for short "the Act"), whereby the petitioner is externed from the area comprising city of Ahmedabad and the limit extended under Police Commissioner from the contiguous area of District Ahmedabad, Gandhinagar, Kheda and Mahesana for a period of 2 years. The petitioner has also challenged the order of Appellate Authority dated 14.9.2000 passed by Deputy Secretary, Home Department, State of Gujarat under Section 60 of the Act whereby the appeal of the petitioner against the above stated externment order is rejected.

2. That the Assistant Police Commissioner, Ahmedabad City, "B" Division served a notice on the petitioner under Section 59 of the Act to show cause why the petitioner should not be externed from a specified area in the notice on the ground that petitioner was found to have been indulging into activity of extorting money from the merchant in the area of Mahakali Mandir, Dudheshwar Cross Road, Ahmedabad and also found to purchase the articles from the merchants without making any payment and has been threatening the merchants who used to demand money for the goods sold. That it is also alleged that petitioner has been acted high-handedly and using violence to the passersby to rob the money and has been behaving indecently with ladies. That two criminal cases are registered at Madhupara Police Station for the offence made punishable under Sections 324, 294(b) read with Section 114 of the Indian Penal Code and Section 135(1) of the Act as well as a chapter case under Sections 107 and 110 of the Criminal Procedure Code, 1973.

The petitioner filed reply to the said show cause notice on 25.10.1999 and also examined witnesses to refute the allegations made in the show cause notice. The copies of the evidence of the said witnesses are tendered on record vide pages no. 26 to 37 and it appears that witnesses who were leaders of the community have stated before the Authority that alleged criminal cases registered at Madhupura Police Station were on account of family dispute with the members of the petitioner and his family and the parties have settled the said dispute. However, the compromise could not be recorded before the Court to compound the said offence. The petitioner has explained that witnesses alleged to have deposed against him, have falsely deposed or

Authority has falsely recorded the same.

On the basis of the said material, respondent no.1 has passed impugned order of externment on 16.6.2000. Being aggrieved with the same, the petitioner preferred appeal under Section 60 of the Act before the State Government and vide order dated 14.9.2000, Deputy Secretary, Home Department, State of Gujarat rejected the said appeal of the petitioner and as such, the present petition is filled.

3. On behalf of the petitioner, it is urged at the Bar that impugned order of externment is passed with inordinate delay and as such, is not sustainable at law. That the concerned Authority has failed to apply the mind to the facts produced on record inasmuch as witnesses have specifically deposed that criminal cases filled against the petitioner were on account of family dispute which is already resolved. The said fact has not been considered by the concerned Authority while passing impugned order. As regard the order of Appellate Authority, it is submitted that despite reporting the said contention, the Appellate Authority has also disregarded the said points and has passed the order mechanically, thereby it is also bad in law.

4. It would be pertinent to note that as apparent from the record, rule was issued vide order dated 16.10.2000 and despite due service, none of the respondent has filed any affidavit in reply to the contentions raised in the petition. The impugned order of externment, copy of which is produced at Annexue-A, does not disclose any explaination with regard to delay inasmuch as though the proceedings were concluded on 31.1.2000, why order of externment has been passed on 16.6.2000.

5. That in the matter of Chothmal Sagansingh Rajput Vs. State of Gujarat, reported in GLR 1989 (1) 63, the Division Bench of this Court has held that inordinate delay in passing the order of externment per se disclose that there was no necessity to pass the order against the party whose freedom would be curtailed on passing of such order. That order of externment should be passed as expeditiously as possible by concluding formality prescribed under the law to meet with the requirement of constitutional mandate and in the absence of reasonable explaination, delay in passing of an order cannot be justified and deserves to be quashed and set aside.

In the instance case, though material was

produced before the concerned Authority that criminal cases filed against petitioner were on account of family dispute, the Authority has filed to consider the said aspect and has failed to refer to the same in the order. Not only that, the Appellate Authority also disregarded the said points though specifically urged and the factum of settlement of the said dispute between the family members has not been considered at all and as such, the order passed by the Appellate Authority suffers the infirmity of non-application of mind and as such, bad in law.

As the petition succeeds on the above stated facts, it is not necessary to consider other contentions raised and canvassed at Bar.

6. On the basis of foregoing discussion, the present petition is allowed. The impugned order dated 16.6.2000 passed by respondent no.1 against the petitioner as well as the order passed by the Deputy Secretary, Home Department, State of Gujarat dated 14.9.2000 confirming the order of respondent no.1 and rejecting the appeal of the petitioner are hereby quashed and set aside. Rule to that extent is made absolute. No order as to costs.

(A.K.Trivedi,J)

(vipul)